

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHILIP BENHAM,

Plaintiff,

vs.

**CITY OF JACKSON, MISSISSIPPI,
and JAMES E. DAVIS, in his official
capacity as Chief of Police for Jackson
Police Department**

Defendants.

CIVIL ACTION NO:
3:19-cv-00911-HTW-LRA

**NOTICE OF STATEMENT
OF PLAINTIFF'S POSITION**

This morning, of November 16, 2020, Plaintiff received Defendants' Motion to Dismiss. Defendants did not consult with Plaintiff about the motion or their intentions to alter the challenged ordinance prior to the filing. The motion itself was first notice.

Mootness is a complicated and nuanced issue. Purported repeals or alterations to laws do not automatically moot challenges to them. Indeed, defendants bear the burden of persuading the Court that the claims are moot. *Friends of the Earth, Inc. v. Laidlaw Ent'l Servs. Inc.*, 528 U.S. 167, 189 (2000). And this burden is a heavy one. *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). The repeal or alteration of the ordinance does not appear to be effective in its present form due to the failure to follow statutory guidelines for proper notice, signings, recording, and publishing. Also, various objections to the mootness, including capable of repetition but evading review doctrine, could be warranted in this matter.

Plaintiff, therefore, requires the time allotted by Local Rule 7 to research, consider and submit a thoughtful Response to the Motion to Dismiss. In the interim, Plaintiff requests this Court enter the written Opinion on Plaintiff's Motion for Preliminary Injunction this Court stated it

would enter yesterday or today following its November 12, 2010 ruling from the bench granting Plaintiff's Motion for Preliminary Injunction. This written opinion should provide additional insight on how Plaintiff is to respond to the pending Motion to Dismiss.

Respectfully submitted,

s/ Nathan W. Kellum
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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2020, the foregoing was filed electronically with the Clerk of the Court by using the CM/ECF system, and that a copy of the foregoing will be sent electronically to all counsel of record by operation of the Court's CM/ECF system.

/s/Nathan W. Kellum
Attorney for Plaintiff Philip Benham